IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No. 358 of 2006
with
CIVIL APPLICATION No. 14970 of 2006
In
APPEAL FROM ORDER No. 358 of 2006

WITH

APPEAL FROM ORDER No. 8 of 2007
With
CIVIL APPLICATION No. 450 of 2007
In
APPEAL FROM ORDER No. 8 of 2007

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VISHNU RAMTAJI THAKORE & OTHERS
versus
AMIT PRANSUKHLAL PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VISHNU RAMTAJI THAKORE & OTHERS
Versus
AMIT PRANSUKHLAL PATEL

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Appearance :
MR PM THAKKAR with MR. KAUSHAL R SHAH for Appellants.
MR YN OZA with MR VM PANCHOLI for Respondent.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 21/03/2007

ORAL JUDGMENT

On the last date, these matters were fully heard and when the Court was about to dictate the judgment, Mr. V.M. Pancholi sought time to take instruction whether his client would like to invite an order or would withdraw Exh.5, and the matter was, therefore, adjourned for today. Today, Mr. Pancholi states that his client would not like to withdraw Exh.5 and the Court may dispose of the appeals on merits. Since arguments are fully heard and since both the appeals arise out of the same impugned order and common points are involved in both the appeals, with the consent of learned advocates, both the appeals are disposed of by this common judgment.

Amit Pransukhlal Patel [hereinafter referred to as the original plaintiff] filed Special Civil Suit No. 108 of 2006 against Vishnuji Ramtuji Thakore and 11 others [hereinafter referred to as the original defendants] before the Senior Civil Judge, Ahmedabad Rural. It is the case of the original plaintiff in the suit that that the original defendants are owners of some property situated in Thaltej area, Daskroi Taluka, Ahmedabad District which is described in paragraph 1 of the plaint. It is the case of the plaintiff that the defendants had agreed to sell the suit property to the plaintiff for which a Banachitti was executed by defendant No.1, Vishnuji Ramtuji Thakore on 20.12.1991. As per the said banachitti, the suit property was agreed to be sold at Rs.14,35,500/- and the plaintiff had paid Rs.12,80,000/- as Earnest Money. The defendants were required to obtain

title clearance certificate and, thereafter, sale deed was to be executed eight months after showing the title clearance certificate to the plaintiff. It is the case of the plaintiff that the defendants have not furnished the title clearance certificate and even no information is given to the plaintiff in this connection. It is also the case of the plaintiff that the said agreement still exists. It is also the case of the plaintiff that defendant No.1, Vishnuji Ramtuji Thakore, executed the agreement for himself as well as on behalf of other family members. It is also the case of the plaintiff that the defendants have now published a notice on 21.09.2005 in connection with title clearance of the suit property and the plaintitf, therefore, gave his objection on 27.09.2002. Even thereafter, the defendants have failed to execute the sale deed in his favour, and therefore, the plaintiff has filed the aforesaid suit for specific performance.

In the aforesaid suit, the plaintiff has taken out an application for interim injunction, Exh.5, for restraining the defendants from selling, transferring or alienating the suit property in any manner whatsoever.

The said application for interim injunction is resisted by the defendants. The defendants have denied execution of the alleged agreement. It is the say of the defendants that the so called banachitti is fraudulent and defendant No.1 has not executed any such document. It is also the say of the defendants that the plaintiff is a businessman and not an agriculturist, and, therefore, the suit property could not have been sold to a non-agriculturist. It is also the case of the defendants

that even otherwise, the suit is time barred as the alleged agreement is of the year 1991 and the suit is filed in the year 2006.

The learned trial Judge initially, on 08.05.2006, directed the defendants to maintain status quo. Thereafter, by the impugned order dated 30.11.2006, the learned trial Judge partly allowed the application Exh. 5 and directed the defendants to maintain status quo during the pendency of the suit.

Being aggrieved by the order dated 30.11.2006 passed by the 5th Additional Senior Civil Judge, Ahmedabad Rural below Exh.5 in Special Civil Suit No. 108 of 2006, the original defendants have filed Appeal from Order No. 358 of 2006. Surprisingly, though an interim relief is granted in favour of the original plaintiff, he has also challenged by impugned order by filing Appeal from Order No. 8 of 2007 on the ground that the defendants are only directed to maintain status quo regarding ownership and there is no specific order injuncting the original defendants from transferring the property.

Learned counsel Shri P.M. Thakkar appearing for the original defendants submitted that filing of the suit is nothing but an abuse of theprocess of law, and the suit is filed only with a view to extract money from the defendants. Mr. Thakkar further submitted that on the basis of the so called banachitti of the year 1991, suit is filed in the year 2006. Mr. Thakkar further submitted that eventhough admittedly the suit property is a joint family property and eventhough Ramtuji, father of defendant No.1 was living at the relevant time in 1991,

the so called banachitti has been signed only by defendant No.1, Vishnuji.. Mr. Thakkar further submitted that there is no reference in the agreement that it is a joint family property. Mr. Thakkar further submitted that the so called agreement is nothing but a forged document and the said document has not been signed by defendant No.1, Vishnuji. Mr. Thakkar further submitted that even the original agreement is not produced, and only xerox copy of the alleged agreement is produced.

Mr. Y.N. Oza, learned counsel appearing for the original plaintiff with Mr. V.M. Pancholi submitted that since title clearance was not given by the defendants for all these years, the suit is within time. Mr. Oza further submitted that the plaintiff came to know that the defendants are going to sell away the suit property only when they saw the advertisement for title clearance and immediately thereafter, the plaintiff has filed the suit and therefore the suit is within limitation. Except the above arguments, no other arguments were made by Mr. Oza on the merits of the case.

I have heard the learned counsel appearing for the parties, at length. I have also gone through the available record and proceedings such as the plaint, interim injunction application, banachitti, affidavits and the impugned order.

In my view, the trial Court has not considered relevant aspects of the matter and on going through the order of the trial Court it is found that the trial Court has decided the application in a half-hearted manner. The Senior Civil Judges are assigned with very important

duty and their pecuniary jurisdiction is unlimited. The Senior Civil Judges are required to decide the disputes wherein large monetary claims are involved and they are also required to decided cases including property disputes wherein stake is very high. Therefore, even while deciding an interim application, it is expected that a Senior Civil Judge should go deep into the merits of the matter to find out prima facie case and balance of convenience. Perusing the impugned order, I am of the view that various facts and circumstances of the case have not been taken into consideration. On the contrary, learned trial Judge has found that it is not necessary to go into the merits of the case while deciding the application for interim relief. This Court, in the case of J.M. PATEL vs. D.B. PATEL reported in 2007 (1) GLR 79 held that before granting ad-interim injunction, the court is required to examine minutely merits of the case to ascertain whether plaintiff has prima facie case to succeed and is also required to consider balance of convenience. It is further held that the Court cannot ignore material on record and circumstances in existence. In the instant case, the learned trial Judge has cursorily observed in the concluding part of the order that since the suit is filed for specific performance of the agreement and since the main point is required to be decided in the suit it is not necessary to go into the merits of the case at this stage to find out whether the plaintiff is likely to succeed in the suit. This is not the requirement of law. On the contrary, it is the requirement of Order 39, CPC, that the Court is required to consider prima facie case and balance of convenience while deciding interim injunction application. The Court cannot decide interim application dehors the provisions

contained in Order 39 of CPC. That apart, in the facts of the present case,if the learned trial Judge had considered the matter by going through all the relevant documents and pleadings of the parties, he would have been able to find out that there is no case worth the name in favour of the plaintiff. It is not in dispute that this is not case where both the sides have entered into agreement to sale as there is signature of only one defendant, Vishnuji, in the so called banachitti. It is the say the of defendants that the so called banachitti is a forged document and that said Vishnuji has never signed the banachitti. In the record only xerox copy of the so called agreement is produced and the learned trial Judge could have directed the plaintiff to produce the original thereof. It is interesting to note that as per the case of the plaintiff, the alleged banachitti for Rs.14,35,500/- was executed by defendant No.1, Vishnuji, on 20.12.1991 and that time, the plaintiff had paid Rs.12,80,000/- towards earnest money. Mr. Oza frankly admitted that he is not in a position to say as to how and in which manner the said amount was paid in the year 1991. The plaintiff is a businessman and if he had paid such a large amount in 1991, it is difficult to understand as to why he remained silent for almost 16 years – as the suit is filed only in the year 2006. The plaintiff has not produced any evidence to show the mode and manner in which he has paid the amount in the year 1991 – either by withdrawing the amount from the Bank or by taking loan or by any such manner. There is also nothing on the record to show that the plaintiff has tried to enforce the document by even writing any reminder to the defendants. It is difficult to believe that a person who has paid a large amount of more than

Rs.12 lakhs would remain silent for all these years and would not take at least follow-up action by asking the defendants to expedite the matter, and would wait indefinitely till the defendants inform him about the title clearance. It is also not in dispute that the suit property is a joint family property but only defendant No.1 has signed the so called banachitti. Even looking to the contents of said banachitti, it hardly inspires any confidence. It is difficult to believe that on the basis of a small piece of paper which is described as a banachitti, the plaintiff would pay more than Rs.12 lakhs which is almost 90% of the agreed price, and then would remain silent from 1991 till the public notice is published after 15 years. As pointed out earlier, the plaintiff has never tried to enforce the agreement at any point of time. Another fact that does not inspire confidence in the alleged banachitti that even though Ramtuji, father of defendant No.1 Vishnuji, was alive when the alleged banachitti was executed in 1991, only defendant No. 1 Vishnuji has signed the alleged banachitti, allegedly agreeing to sell away the entire joint family property. The learned trial Judge has not taken any of these circumstances into consideration. The impugned order is passed in a very casual and routine manner. The learned trial Judge has not even take care to go through the pleadings of the parties and the nature of the issue involved in the matter, and has granted status quo in a routine and casual manner by observing that merits of the case is not required to be gone into at the time of deciding interim injunction application. Now-a-days, such type of proceedings are coming up every day wherein in land matters injunction is sought for without placing on record appropriate material and in such cases,

Court cannot grant status quo in a casual manner, as such orders thereafter continues for a long time till the suit is finally decided. In such cases, it is also desirable that even if the Court is prima facie satisfied, the plaintiff should normally be asked to give security so that in case the suit is dismissed, the other side can be compensated. As pointed earlier, while deciding interim application, it is the duty of the trial Judge to find out from documentary evidence on record whether any prima facie case is made out or not. It is not the requirement of law that if any interim injunction application is filed in a suit, the Court should automatically grant status quo or interim protection. On the contrary, the Court must ascertain prima facie case and balance of convenience before granting any interim injunction of status quo or any interim protection as the learned Judge is assigned with a very important duty while deciding such applications.

Considering the facts and circumstances of the case narrated above, and considering the fact that the Court is required to consider prima facie case as envisaged by Order 39, CPC, whereby both prima facie case and balance of convenience are required to be considered before granting injunction and since the trial Court has not examined the case in a proper prospective, and even otherwise, as pointed out earlier, the suit on the face of it is absolute vexatious as for 15 years, the plaintiff has never tried to get the alleged agreement performed or atleast even taken any follow up action, there is absolutely no substance in the suit. It appears to me that as argued by Mr. Thakkar, only with a view to extract money the suit is filed, such type of litigation

is not required to be encouraged. Considering the aforesaid aspects of the matter, the impugned order of the trial Court is not sustainable.

In the result, A.O. No. 358 of 2006 is allowed and , the impugned dated 30.11.2006 passed by the 5th Additional Senior Civil Judge, Ahmedabad Rural below Exh.5 in Special Civil Suit No. 108 of 2006 is quashed and set aside. The injunction application Exh. 5 filed before the trial Court stands dismissed. The respondent original plaintiff is directed to pay costs of Rs.50,000/- to the defendants and the same is to be deposited in the trial Court within a period of two weeks from today. On such deposit, the appellant will be entitled to withdraw the same unconditionally. Mr. Pancholi states that he will inform his client to deposit the amount within two weeks from today.

For the reasons recorded above, A.O. No. 8 of 2007 stands dismissed with costs which is quantified at Rs.50,000/-.

In view of the above order passed in the main appeals, the Civil Applications do not survive and it stand disposed of accordingly. Notice is discharged.

Mr. Pancholi, learned advocate for the original petitioner submitted that the execution, implementation and operation of this order may be stayed for two weeks as his clients wants to challenge the order before the Honourable Supreme court. In the facts of the case, I do not find any reason to entertain the said request. The request, therefore, is rejected.

[P. B. MAJMUDAR, J.]

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